

UNITED STATES DEPARTMENT OF COMMERCE

**NON-FEDERAL EMPLOYMENT
AND OUTSIDE ACTIVITIES
SUMMARY OF ETHICS RULES
2008**



**Ethics Law and Programs Division
Office of the Assistant General Counsel for Administration**

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NON-FEDERAL EMPLOYMENT AND OTHER OUTSIDE ACTIVITIES

Basic Principle: Avoid Divided Loyalties

The basic principle behind the rules regarding non-Federal employment and other outside activities is to avoid situations creating divided loyalties, meaning situations in which you will have to weigh your duty to a non-Federal employer or an organization in which you are actively involved against your duty to the United States Government. In order to ensure public confidence in the actions of the Government, ethics rules are designed to ensure that you are never placed in such a position, sometimes by limiting your Government duties and sometimes by limiting your outside activities.

A summary of the rules applicable to outside employment and activities follows. However, the best means to ensure that your actions are consistent with ethics rules is to seek advice about a specific situation.

To obtain advice regarding outside activities and other ethics issues, contact the Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, at 202-482-5384 or ethicsdivision@doc.gov.

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GENERAL RULES REGARDING NON-FEDERAL EMPLOYMENT AND OUTSIDE ACTIVITIES

Basic Rule. While you are a Federal employee you may not engage in non-Federal employment or other outside activity that is incompatible with your Government position. An outside activity may be incompatible if it: (1) is contrary to a specific statute or regulation, (2) will require you to disqualify (or recuse) yourself from participating in important duties, (3) will create an appearance of misuse of your Government position, or (4) will result in impairment of your ability to perform, or create a schedule conflict with, your Government duties. The limitations based on a statute or regulation are addressed below under “Special Rules regarding Non-Federal Employment and Outside Activities.”

Limitations Based on a Disqualification Requirement. You may not participate as a Federal employee in any matter:

- affecting the financial interests of an outside employer or an organization in which you serve as an officer, director, or trustee; or
- in which one of the parties is (or is represented by):
 - an outside employer or client,
 - a former employer or former client (for a period of one year (or two years if you received an extraordinary severance payment)),
 - an entity with which you have a financial or business relationship (other than a routine consumer transaction), or
 - an organization (other than a political party) in which you are an active participant.

If the disqualification is based on a financial interest of an outside employer or an organization with which you serve as an officer, director, or trustee (or formerly served and from which you received an extraordinary severance payment), a waiver of the rule may be available if the financial interest is not substantial, but such waivers are rarely granted. If the disqualification is based on one of the other reasons listed, an exception may be authorized if the needs of the agency in your participation outweigh any appearance concern. To obtain a waiver or authorization, contact the Ethics Law and

Programs Division at 202-482-5384.

If the disqualification requirements listed above will bar you from working on matters central or critical to performance of your duties, thereby impairing your ability to perform your duties, the outside activity is considered incompatible with your Government position and you may not continue such employment or engage in such outside activity.

Limitations Based on Appearance Concerns regarding Misuse of Government Position. Outside employment or an outside activity may also be incompatible with your Government position in some circumstances based on an appearance concern, such as an appearance of Government endorsement or of misuse of Government information or your position. These situations must always be addressed on a case-by-case basis. If you have a question about appearance concerns regarding outside employment or an outside activity, you should contact the Ethics Law and Programs Division at 202-482-5384 for specific advice.

An improper appearance of endorsement may be present if, due to your position, your private activities are likely to be interpreted as conveying Government endorsement of a position or organization. This is more likely a problem with higher-level officials and with regard to organizations with interests in matters of a controversial nature pending before your agency.

An improper appearance problem may also be present if you have access to nonpublic information and propose engaging in an outside activity for which such information would be of benefit to the outside employer or organization. The activity may be deemed incompatible with your Government position if there would be a likely public perception that the information was improperly used to further a private activity. A similar problem may exist if an agency's actions may appear to be improperly influenced by the outside employment or activities of its employees.

Limitations Based on Ability Impairments or Schedule Conflicts. Outside employment is incompatible with your Government duties if it will require absences during duty hours or if it will create physical or mental strains on you that will impair your ability to optimally perform your Government duties.

A schedule conflict may be present even if you plan to engage in the activity during

leave hours if the grant of leave is not guaranteed, or if it is reasonably possible that it may be canceled, and if the nature of the outside duties makes rearranging your non-Federal activity impossible. For example, if you are engaged in litigation as an outside activity, you would be subject to a court's order regarding when you must be present for proceedings; therefore, you may not be available for duty on your Federal job when needed.

Disqualification Regarding Prospective Employers. Please note that you are required to disqualify yourself from participating in any matter affecting the financial interests of a prospective employer—anyone that you have contacted, or who has contacted you, about possible employment. However, this disqualification requirement does not prohibit you from conducting a job search for a post-Federal employment position, even if it will prevent you from performing important Government duties.

SPECIAL RULES REGARDING NON-FEDERAL EMPLOYMENT AND OUTSIDE ACTIVITIES

Contacting the Government on Behalf of Others. Federal criminal statutes bar you from serving as an agent or attorney for, or, if compensation is received, from otherwise representing, anyone before a Federal agency or Federal court. “Representing” for these purposes includes any communication made with the intent of influencing Government action, including signing a letter, making a telephone call, attending a meeting, or testifying as an expert witness. You are also barred from receiving compensation for the representational activities of others if the payment is made when you are a Federal employee, or if the representational activities took place when you worked for the Government. There are no restrictions on representational activities before Congress that you make in your personal capacity.

Exceptions. Exceptions to the bar on representing others before the Government apply to contacts on behalf of:

- your spouse, child, or parent, or an estate you administer, if:
 - the matter at issue is not one in which you participated personally and substantially as a Federal employee,
 - the matter at issue is not one that is under your official responsibility, and
 - you receive prior approval through the Ethics Law and Programs Division;
- a Federal employee in a personnel dispute, if:
 - you receive no compensation for the activity, and
 - it is not inconsistent with performance of your Government duties; or
- a non-profit organization composed primarily of Federal employees or their families, if:
 - you receive no compensation for the activity,
 - it is not inconsistent with performance of your Government duties, and
 - the matter at issue does not involve:
 - a claim against the Federal Government or the District of Columbia,
 - a proceeding in which the organization is a party, or
 - an agreement providing for Government funding to the organization.

If you are a special Government employee (an employee who works for 130 days or

less in a 365-day period), the restriction on engaging in representational activities applies only to matters involving specific parties:

- in which you participated personally and substantially as a Government employee; or
 - if you are expected to work for 60-130 days during a 365-day period, that are pending before the Department of Commerce.
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Teaching, Speaking, and Writing. You may not accept compensation for teaching, speaking, and writing that relates to your official Government duties. A matter “relates to your duties” if:

- it is performed as part of your official duties;
- the invitation to engage in the activity was extended primarily because of your Government position, rather than your personal expertise in the matter;
- the invitation to engage in the activity was made by someone whose interests may be substantially affected by the performance of your Government duties (unless it is teaching that is for a course that is the regular curriculum of an accredited educational institution);
- the information you will impart is based substantially on nonpublic Government information; or
- the subject of the activity deals in significant part with:
 - a matter to which you were assigned within the last year,
 - a policy, program, or operation of your agency, or
 - if you are a non-career (political appointee) member of the Senior Executive Service (SES) or Senior Foreign Service (SFS), the general subject matter area, industry, or economic sector primarily affected by your agency’s programs,unless it is teaching that is for a course that is the regular curriculum of an accredited educational institution.

If you are a non-career member of the SES (or SFS), you must receive written approval through the Ethics Law and Programs Division before receiving any compensation for teaching, regardless of whether the teaching relates to your official duties.

Notwithstanding the general restriction on accepting compensation, unless you are a non-career member of the SES (or SFS), you may accept travel expenses for a teaching or speaking engagement, even if it relates to your official duties or the actions of your agency, if the activity is performed in a private capacity during non-duty hours or

when on leave.

You may not use your Government title or refer to your affiliation with the Department in connection with personal writing or teaching unless it is included with other biographical information not related to your Government position or it is in connection with a writing for a scientific or professional journal and there is a disclaimer stating that the views expressed do not necessarily represent the views of the agency.

Review Procedures for Personal Communications of Interest to the Department. You must submit a written communication you will be making in your personal capacity to your supervisor (or other official identified by your agency) before you publish or otherwise publically issue it if it relates to a Department program, policy, or operation for which you have some responsibility as part of your Government duties. The official to whom you submit the writing will be responsible for reviewing the publication within fourteen days (at the most) to identify whether it presents a problem because it contains classified information, violates applicable ethics regulations or statutes, or improperly attributes your personal views as that of the Department or might reasonably be perceived as doing so. The purpose of this review is advisory; agency officials do not have authority to approve or disapprove your personal writings.

If a communication you make could reasonably but incorrectly be construed as representing the views of the Department, it must contain an explicit disclaimer indicating that the views expressed are your personal views.

Personal communications that are not official may not be prepared during duty hours or using Government resources, including the assistance of other employees while on duty.

Outside Practice of Law. The outside practice of law is considered incompatible with your Government duties, whether or not you serve in an attorney position in the Government, if it will involve:

- representational activities before a Federal court or Federal agency (except with regard to representing without compensation an employee in a Federal personnel action if such representational activity is not related to your Government duties);
- legal services in matters in which the United States Government is a party or has a substantial interest; or

- providing services during regular duty hours.

Because of the last factor, representing a party in litigation would, in many situations, be incompatible with your Government position because it may require you to provide legal services during regular duty hours when leave would not be available.

You are encouraged to provide pro bono legal work to poor and disadvantaged persons as a service to the community, but must comply with these limitations. You should seek advice from the Ethics Law and Programs Division before practicing law if you have any question regarding its compatibility with your Federal position.

Note that if you are a non-career member of the SES (or SFS), you may not receive compensation for practicing law or affiliating yourself with a law firm.

You must also ensure that your activities are consistent with bar rules in any jurisdiction in which are licensed to practice law. If you have questions about bar rules, you should contact the applicable bar association or private counsel.

Affiliation with a Professional Services Firm. If you are a non-career member of the SES (or SFS), you may not permit your name to be used by any firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship. Also see related rules below under “Limitations on Receipt of Compensation.”

Working for a Foreign Government. The United States Constitution bars Federal employees from accepting an office or other employment with, or receiving any payment from, a foreign government, unless authorized by Congress. By statute, Congress has authorized employees of the National Institute of Standards and Technology to accept fellowships with foreign governments in certain circumstances. For advice regarding this statutory authority or other guidance regarding work for a foreign government, contact the Ethics Law and Programs Division at 202-482-5384.

Service as a Registered Foreign Agent or Lobbyist for a Foreign Government. Federal employees may not act as foreign agents or as lobbyists for foreign governments. Therefore, you may not participate in outside activities or employment that would require your registration as a foreign agent under the Foreign Agents

Registration Act or as a lobbyist for a foreign government under the Lobbying Disclosure Act. Please note that registration applies not only to persons who represent foreign governments before the United States Government, but may apply to representatives of foreign non-governmental entities, such as political parties and organizations, and may apply to dealings with private sector individuals as well as government officials, such as serving as a public relations adviser or fund-raiser. You should seek advice from private counsel or the Department of Justice if you have any questions regarding the Foreign Agents Registration Act.

Contracting with the Federal Government. The Federal Acquisition Regulation restricts Federal agencies from contracting with Federal employees or with companies substantially owned by Federal employees. However, an exception may be made for a compelling reason. Note that this is a restriction on Federal agencies, rather than on your activities. For advice on contracting with the Government, contact the applicable agency contracting office.

Limits on US&FCS Employees Working Overseas. If you are a United States citizen serving as a member of the U.S. and Foreign Commercial Service (US&FCS) overseas, you are barred from operating a business or working in your country of assignment, except for work that takes place solely within the U.S. Embassy community or, if you receive approval of the Chief of Mission, consists of teaching for an extension program of an accredited U.S. degree-granting institution or for a private foreign university that is not state-supported. If you serve in the US&FCS and are either a U.S. citizen or a foreign service national, you must receive approval from the Chief of Mission and an ethics official before you (or your spouse or a family member) may serve as an officer, director, or trustee of a private organization. (You must also receive approval of the Chief of Mission before you engage (or your spouse or a family member engages) in fund-raising for a non-profit organization in an official capacity. Restrictions regarding activities performed in your official capacity are discussed further below.)

Limits on NOAA Employees. If you are a National Marine Fisheries Service employee, you generally may not engage in commercial fishing activities as a private activity. If you are a National Weather Service meteorologist, you generally may not serve as an on-air weather forecaster or expert in a private capacity. These restrictions are based on the general rules regarding outside employment and the need to avoid an

appearance of misuse of information or position. If you have a question regarding whether these general restrictions should apply to a particular situation, such as where an appearance problem is not likely, you should contact the Ethics Law and Programs Division for specific advice.

Limits on USPTO Employees. If you are an employee in the United States Patent and Trademark Office, you are barred from acquiring any interest in a patent. This statutory restriction has been interpreted as barring USPTO employees from serving on the board of entities that hold interests in a patent.

General Conduct Prejudicial to the Government. Office of Personnel Management Regulations supplement ethics regulations by providing that employees may not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

LIMITS ON COMPENSATION – RULES FOR NON-CAREER MEMBERS OF THE SENIOR EXECUTIVE SERVICE AND PRESIDENTIAL APPOINTEES

Compensation Limits on Non-career Members of the SES (and SFS). If you are a non-career member of the SES (or SFS) (i.e., a political appointee), you are subject to a number of limits on outside earned income.

Specifically, you may not:

- receive outside earned income in excess of 15% of the annual basic rate of pay for level II of the Executive Schedule (which limits such outside compensation to \$25,830 per year in 2008);
- receive any compensation for:
 - practicing a profession that involves a fiduciary relationship,
 - serving as an officer or the member of a board of a corporation or organization, or
 - affiliating with or being employed to perform professional duties by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship; or
- receive compensation for teaching, unless:
 - you have first received written approval through the Ethics Law and Programs Division based on a determination that:
 - the teaching is not inconsistent with ethics rules relating to outside activities or compensation, as summarized above;
 - the offer to teach was not extended because of your Government position; and
 - the teaching will not interfere with the performance of your duties.

Please note that royalties are considered a property right, but an advance on royalties is considered a form of earned income.

Compensation Limits on Presidential Appointees. If you are in a position requiring Presidential appointment and Senate confirmation, you may not receive any outside earned income during the period of your service in the Presidential Appointee position.

POLITICAL ACTIVITIES

Bar on Using Government Authority for Political Purposes and on Engaging in Political Activities During Duty Hours and On Government Premises. All Federal employees are barred from using the authority of their Government positions to influence an election. Federal employees (except Presidential Appointees in positions requiring Senate confirmation) are also barred from engaging in partisan political activities while on duty or while on Government premises.

Limitations Applicable to All Regular Employees regarding Off-Duty Activities. Unless you are a special Government employee or serve in an intermittent basis with an irregular schedule, you are barred from:

- running for office:
 - as a partisan candidate in an election, or
 - as an independent candidate in a partisan election (other than in those localities specifically identified by regulation);
- soliciting, accepting, or receiving campaign contributions;
- using Government resources for a political activity (unless you are a Presidential Appointee in a position requiring Senate confirmation (other than the Inspector General) and pay in advance for limited use of resources);
- wearing a political button while on duty or at work;
- engaging in political activities while displaying Government employment identification or wearing a uniform;
- displaying a partisan banner, sign, sticker, or poster on Federal premises; or
- considering political affiliation or political activity with regard to a personnel action (except for a Schedule C or noncareer SES appointment).

Localities in which Federal employees are allowed to run for office as independent candidates in local elections include suburban counties surrounding Washington, D.C. (although not D.C. itself) and other areas in which the majority of voters are Federal employees. Contact the Ethics Law and Programs Division at 202-482-5384 for information on which localities are covered by this rule.

Limitations Applicable to Special Government Employees and Intermittent Employees. If you are a special Government employee (an employee serving for 130 days or less during a 365-day period) or an employee serving on an intermittent basis with an irregular schedule, you are barred from:

- engaging in political activities while on duty;
 - engaging in political activities while on Government premises;
 - using Government resources for a political activity;
 - using public office to influence an election;
 - wearing a political button while on duty;
 - displaying a partisan banner, sign, sticker, or poster on Federal premises; or
 - considering political affiliation or political activity with regard to a personnel action (except for a Schedule C or non-career SES appointment).
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Additional Limitations Applicable to Career Members of the SES, Administrative Law Judges, and NOAA Corps Officers. If you are a career member of the SES or an administrative law judge, you are also barred from:

- actively participating in a partisan campaign, such as through:
 - making telephone calls on behalf of a political party or candidate,
 - circulating nomination petitions,
 - stuffing envelopes or distributing campaign material for a candidate, or
 - attending a political convention as a delegate; or
- serving as an officer of a political party or organization.

Similar restrictions also apply to NOAA Corps officers.

You can obtain a handout summarizing political activity rules from the Ethics Law and Programs Division.

LIMITATIONS ON GOVERNMENT EMPLOYMENT AND OFFICIAL ACTIVITIES

Although this handout focuses primarily on non-Federal employment and outside activities, the following limitations apply to working for the Federal Government and to engaging in certain activities as part of your official Government duties.

Holding More than One Federal Position. Although you are generally not barred from holding more than one Government position, there may be restrictions on receiving compensation, particularly if you are in a full-time Federal position. For advice on compensation limits set forth in the Dual Compensation Act or other limits on multiple employment, contact the applicable human resources office.

Service with Non-Federal Organizations in an Official Capacity. Government employees may not serve as officers or directors of non-Federal organizations, unless there is specific statutory authority or the organization is a standard-setting body. If a formal relationship between an agency and an outside organization would be beneficial, a senior agency official may authorize you to serve as a liaison, which may encompass service to the organization's board in an advisory capacity or service with subsidiary parts of an organization, such as chair of an advisory committee.

Engaging in Fund-Raising for Private Organizations Overseas. If you are in the US&FCS and serve overseas, you (and your spouse and family members) may engage in fund-raising for a private organization in your official capacity if approved by the Chief of Mission based on a determination that such private fund-raising activities would clearly advance U.S. policy interests while minimizing the appearance of preference or use of public office for private gain.

Practicing Law. If you are licensed to practice law, you must comply with bar rules applicable to any jurisdiction in which you have a licence when performing your Government duties, as well as Federal laws and regulations regarding conduct.

THE ROLE OF MANAGERS REGARDING THE OUTSIDE ACTIVITIES OF SUBORDINATES

Responsibilities of Managers. If you are a supervisor, you should consider not only the rules as applied to yourself, but as they apply to your subordinates.

- If you are a supervisor, you may be restricted from making assignments to employees who have non-Federal employment or are engaged in outside activities related to the work of your office. If these restrictions will interfere with office operations, you should contact the Ethics Law and Programs Division.
- If a subordinate of yours is barred from working on a matter because one of the parties is a recent former employer or client, a business associate, or an organization in which the subordinate is actively involved, and if the employee's participation is important for the office, you may authorize such participation, notwithstanding appearance concerns, based on the needs of the agency. The Ethics Law and Programs Division can prepare the authorization, if needed.
- If a subordinate of yours is barred from working on a matter because it will affect the financial interests of an outside employer or prospective employer, and if reassignment of the task, resignation, and termination of the job search are not viable options, the head of your agency may approve a waiver of the disqualification requirement. However, current Department policy is to not issue such waivers. Contact the Ethics Law and Program for additional guidance.
- Heads of operating units or Secretarial Officers may provide written approval for employees to represent spouses, children, parents, and estates before Federal agencies or courts. Such activity is not allowed unless such written approval is granted through documents prepared by the Ethics Law and Programs Division.
- Senior managers may assign employees to serve as liaisons with non-Federal organizations if such service will further an agency mission. Approval to serve as a member of an organization's board or as an officer is not permitted, however, unless the organization is a standards-setting body (in which case there should be prior consultation with the Ethics Law and Programs Division).

SUMMARY OF SPECIAL RULES FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE AND SENIOR FOREIGN SERVICE

Rules applicable to career members of the SES. If you are a career member of the Senior Executive Service (SES):

- you may not actively participate in a partisan political campaign or hold office in a political organization, even during non-duty hours.

Rules applicable solely to non-career members of the SES (and SFS) (political appointees). If you are a non-career member of the SES (or Senior Foreign Service (SFS)):

- you may not receive compensation, including travel payments, for teaching, speaking, or writing concerning the general areas of responsibility of your agency;
- you must receive prior written approval from an ethics official before accepting any compensation for teaching;
- you may not receive during any calendar year outside earned income in excess of 15% of the basic pay rate for level II of the Executive Schedule (which, in 2008, limits outside earned income to no more than \$25,830);
- you may not receive compensation for practicing a profession that involves a fiduciary relationship (such as the practice of law);
- you may not receive compensation for affiliating yourself with a firm that provides professional services involving a fiduciary relationship;
- you may not receive compensation for serving as an officer or board member of an association, corporation, organization, or other entity; and
- you may not permit your name to be used by a professional firm or association that has fiduciary responsibilities (such as a law firm, accounting firm, or consulting firm).

For advice regarding engaging in outside activities and other ethics-related issues, contact the Ethics Law and Programs Division

by telephone at: 202-482-5384

or by e-mail at: ethicsdivision@dov.gov.